

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MOTOROLA, INC.

Plaintiff.

V.

RESEARCH IN MOTION LIMITED AND
RESEARCH IN MOTION CORPORATION,

Defendants.

CV 2:08 CV 69 (TJW)

ORDER

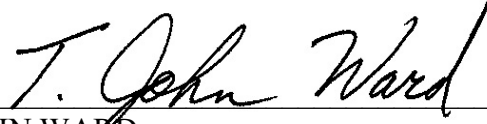
This action is one of three filed rising out of a dispute between the parties over a Fair and Reasonable Non-Discriminatory Terms (“FRAND”) licensing agreement. On February 16, 2008, at 12:01 a.m. Research in Motion (“RIM”) filed their suit in the Northern District of Texas (3-08-CV-284). Motorola filed this action at 12:23 a.m. on that same date. In addition, Motorola filed a declaratory judgment action in the District of Delaware. The Delaware action has since been transferred to the Northern District of Texas and consolidated with that case.

Motorola does not argue that the cases fail to overlap, but only argues that the first filed rule should not apply because the cases were filed within minutes of each other. The case from the Northern District of Texas that Motorola cites to support its point is inapposite. The case deals with the propriety of exercising federal jurisdiction when there is an earlier filed state action. *See Pennsylvania General Ins. Co. v. CaremarkPCS*, 2005 WL 2041969, at *3.

The first filed rule applies in this instance. Cause number 3-08-CV-284 in the Northern District of Texas was the first filed action. This case, therefore, is transferred to the Northern

District of Texas, Dallas Division.

SIGNED this 17th day of October, 2008.

A handwritten signature in black ink, reading "T. John Ward". The signature is written in a cursive style with a large, stylized "T" and "W".

T. JOHN WARD
UNITED STATES DISTRICT JUDGE